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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,883	07/03/2003	Ronald D. Moran	33319	6857
7590	12/30/2004		EXAMINER	
Hovey Williams LLP Suite 400 2405 Grand Blvd. Kansas City, MO 64108			STERLING, AMY JO	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 12/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/613,883	MORAN, RONALD D.
<b>Examiner</b>	<b>Art Unit</b>	
Amy J. Sterling	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 04 November 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 and 21-30 is/are rejected.
- 7) Claim(s) 18-20 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/12/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

This is the first Office Action for application number 10/613,883, Method and Apparatus for Retaining Model Structural Members, filed on 7/3/03. Claims 1-30 are pending.

### ***Election/Restrictions***

Claims 31-35 have cancelled as being drawn to a nonelected species. Election was made without traverse in the reply filed on 11/4/04.

### ***Information Disclosure Statement***

The information disclosure statement submitted on 7/12/03 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

### ***Claim Objections***

Claim 8 is objected to because of the following informalities: The term "slibable" should be changed to "slideable". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9-16 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 4687165 to Blackburn.

The patent to Blackburn discloses a unitary apparatus (the term unitary meaning relating to a unit, according to Webster's Dictionary) for retaining model structural members in position including a substantially planar base member (10), having a plurality of holes (12), arranged in rows and columns with substantially constant space therebetween which extend through the base member (10) and at least one retainer (20, 22, 24, 30, 28) having a circular cross-sectional peg (30) having a first transverse dimension, which frictionally engages the base (10) and rotationally fits within the holes (12), the retainer having a flange (20) having a second transverse dimension greater than the first transverse dimension and sized for holding a model structural member (14) between the base (10) and the flange (20) and a lobe (24) having a circumscribing engagement surface and positioned intermediate the peg and the flange and has a third transverse dimension larger than the first transverse dimension and smaller than the second dimension wherein the engagement surface of the lobe (24) is eccentrically positioned relative to the peg (30) and is substantially circular having a center axis which is spaced from the pivot axis of the peg (30). Blackburn also shows a handle (28) positioned on the flange and extending opposite of the peg (30) and a model structural member (14) having a thickness, the engagement surface having a height between the flange and the peg which is substantially corresponding to the thickness of the structural member (14).

Claims 21 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 3594940 to Yonezawa.

Yonezawa shows the method of providing a base member (1) with a plurality of recesses (4) therein, at least one retainer having a peg (8) with a first transverse dimension complementally sized for receipt in the recesses and a flange (10) having a second transverse dimension substantially greater than the first transverse dimension and a plurality of model structural members (7, 12), coupling the first model structural members to the base by inserting the peg of the retainer into a recess proximate the model structural member with at least a portion of the model structural member held by the flange (10) against the base member (1) and bonding the second of the model members to the first model member (See Col. 2 lines 56-57 for attachment of structural members) and also teaches the method of providing at least three retainers including the step of bending a first model structural member (12) and positioning the retainers on alternate first and second sides of the structural member with the pegs (8) received in different recesses.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4687165 to Blackburn as applied to claims 1, 4 and 27 above, and in view of United States Patent No. 3594940 to Yonezawa.

Blackburn shows the basic inventive concept as shown above with the exception that it does not show that the apparatus is made of a synthetic resin material and includes a carrier with a pair of side rails for slideable receipt of the base between the side rails.

Yonezawa teaches a base (1) with a plurality of holes (4) which is made of a synthetic resin material (See Col. 1. line 73 for material selection) which has a carrier with a pair of side rails (2) for slideable receipt of the base (1) between the side rails (2), (See Fig. 7), used for removable storage of the base. Therefore it would have been obvious to one of ordinary skill in the art from the teachings of Yonezawa to store a base in a carrier for removable storage of the device.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4687165 to Blackburn as applied to claims 1 and 10-16 and in view of United States Patent No. 5544619 to Braun.

Blackburn shows the basic inventive concept with the exception that Blackburn does not teach a clip having a frame and an arm including a plurality of edges for holding structural members against the edge.

Braun teaches a base (1) with structural members (13) which have a clip (12) with a frame (side and bottom portion of clip) and arm (portion hooked over structural

member) used for holding the structural member against the edge. Therefore it would have been obvious to one of ordinary skill in the art from the teachings of Braun to have included clips in order to further hold the structural members in place.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 3594940 to Yonezawa as applied to claim 21 above and in view of United States Patent No. 5360365 to Evans.

Yonezawa teaches the method above with the exception that it does not teach the method of bonding structural members by adhesive.

Evans which shows model structural members (10) teaches that these structural members may be bonded by adhesive (See Col. 3, line 65) used to permanently secure the desired members together. Therefore it would have been obvious to one of ordinary skill in the art from the teachings of Evans to have the method of bonding structural members by adhesive in order to permanently secure the desired members.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 3594940 to Yonezawa as applied to claim 21 above and in view of United States Patent No. 5544619 to Braun.

Yonezawa teaches the method above with the exception that it does not teach the method of providing a clip having a frame including at least a first edge and a second edge an arm extending from the frame and oriented for holding a structural member against at least one of the edges and including the step of attaching the clip to

one of the first and second model structural members with one of the first and second model structural member aligned along the first edge and the other of the first and second model structural member aligned along the second edge and the method of including a second clip having a frame, including at least a first edge and a second edge and an arm extending from the frame and oriented for holding a model structural member against at least one of the edges and providing a third model structural member and including the step of attaching the second clip to one of the first, second and third model members aligned along respective first and second edges of the second clip.

Braun teaches the method of providing a clip (12) having a frame (lower part of 12) including at least a first edge and a second edge an arm (upper part of 12) extending from the frame and oriented for holding a structural member (13) against at least one of the edges and including the step of attaching the clip to one of the first and second model structural members with one of the first and second model structural member aligned along the first edge and the other of the first and second model structural member aligned along the second edge and the method of including a second clip having a frame, including at least a first edge and a second edge and an arm extending from the frame and oriented for holding a model structural member against at least one of the edges and providing a third model structural member and including the step of attaching the second clip to one of the first, second and third model members aligned along respective first and second edges of the second clip. This configuration used to hold the structural members to the base. Therefore it would have been obvious

to one of ordinary skill in the art from the teachings of Braun to have added the method of providing clips to hold structural members in the configuration above, in order to secure the structural members to the base.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 3594940 Yonezawa as applied to claims 21 above, and in view of United States Patent No. to 4687165 to Blackburn.

Yonezawa shows the basic inventive concept as shown above including a base (1) with a plurality of holes (4) which is made of a synthetic resin material (See Col. 1, line 73 for material selection), including a retainer having a peg (8) having a first transverse dimension, a flange (10) having a second transverse dimension . Yonezawa does not teach that the retainer includes a lobe having a circumscribing engagement surface located between the flange and the peg with a third dimension which is greater than the first dimension, but less than the second dimension, the surface being eccentrically located relative to the peg, the method step of pivoting the retainer with the peg in one recess.

Blackburn teaches a retainer (20, 22, 24, 30, 28) having a circular cross-sectional peg (30) having a first transverse dimension, which frictionally engages the base (10) and rotationally fits within the holes (12), the retainer having a flange (20) having a second transverse dimension greater than the first transverse dimension and sized for holding a model structural member (14) between the base (10) and the flange (20) and a lobe (24) having a circumscribing engagement surface and positioned intermediate

the peg and the flange and a has a third transverse dimension larger than the first transverse dimension and smaller than the second dimension wherein the engagement surface of the lobe (24) is eccentrically positioned relative to the peg (30) and is substantially circular having a center axis which is spaced from the pivot axis of the peg (30), and the method step of pivoting the retainer with the peg in one recess. (See Abstract, line 16 for rotation of peg (30), retainer lobe (24) and flange (20), the rotation used to lock the model members (14) into place. Therefore it would have been obvious to one of ordinary skill in the art from the teachings Blackburn to have the method of pivoting the device in order to lock the desired members in a desired location.

#### ***Allowable Subject Matter***

Claims 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The reason is that he prior art does not show wherein the arm includes a shoulder extending outwardly from the frame and a finger spaced from one of the edges for receiving and holding a model structural member in a space located between the edges and the finger.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following documents show various Toy modeling devices

5820436 to Pohlman

4585422 to Kay

4062130 to Wood et al.

3695616 to Weber

3659376 to Fischer

3067536 to Brittsan

3020672 to Zion

2885793 to Oback et al.

1355975 to Hornby

Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 703-308-3271. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine number for the Technology center is 703-872-9306 (formal amendments) or 703-308-3519 (informal amendments/communications). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 703-308-2168.

*Amy J. Sterling*  
Amy J. Sterling  
12/27/04